

December 2, 2015

WAC 173-350-325, Soil and Sediment Criteria and Use - Workgroup Conference Call

Name	Org	E-mail	Phone	In Attendance
Marni Solheim	Ecology – W2R	marni.solheim@ecy.wa.gov	(509)329-3564	Y
Matt Hinck	Cal Portland	mhinck@calportland.com	(206)764-3021 (206)914-9764 cell	Y
Janusz Bajsarowicz	Pacific Topsoils (PTI)	januszb@pacifictopsoils.com	(425)231-4526	Y
Jared Keefer	Jefferson County Health	jkeefe@co.jefferson.wa.us	(360)385 - 9411	Y
Andy Comstock	Tacoma Pierce County Health	acomstock@tpchd.org	(253)798-6538	Y
Jake Finlinson	King County	jake.finlinson@kingcounty.gov	(206)477-3524	Y
Chris Martin	Ecology - WQ	christopher.martin@ecy.wa.gov	(425)649 7110	Y
John Bromley	WA Dept Natural Resources	john.bromley@dnr.wa.gov	(360)902-1452	N
Jenifer Hill	WA Dept Transportation	hilljen@wsdot.wa.gov	(360)570-6656	Y
Rob Bonnett	J.R.Hayes (representing the AGC)	rbonnett@jrhayes.com	(425)392-5722 (206)854-2489 cell	Y
Alex Smith	Port of Olympia	alexs@portolympia.com	(360)528-8020	N
Dale Arnold	City of Spokane Wastewater Management Dept	darnold@spokanecity.org	(509)625-	N
Non-Workgroup:				
Rod Wittaker	WRRRA	rod@wrra.org		Y
Jim Blais	Gary Merlino Construction Company	JBlais@gmccinc.com		Y
Jim Burnett				Y

**Agenda**

- New deadline
- Review latest rule draft

Bulleted items that are not italicized are comments from the meeting. *Italicized wording represent the issues discussed.*

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## **New deadline**

*The deadline for completing the workgroup draft has been extended from December 1 to February 1. This puts informal public comment to May 2016, formal public comment October 2016, and rule adoption March 2017.*

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## **Review latest rule draft**

*Applicability: Moved solid waste activities under exemptions as opposed to excluding in applicability sections. This is to ensure consistency with the rest of the rule.*

*Clean soil/sediment definition: Marni would like to make more changes to clarify that all soil/sediment does not require testing. Separate the first sentence into two parts. A person can make a clean soil/sediment determination based on due diligence. If due diligence indicates there may have been a release, a person can also make a clean soil/sediment determination based on test results.*

- The group agreed with making this distinction, though it prompted discussion again about the pitfalls of making a clean soil/sediment decision based on due diligence, but receiving test results above an SSL. Unless there was contradictory information that due diligence was not performed adequately upfront and there is information indicating a release had occurred, the draft rule defines that soil/sediment as clean. Health agencies would still have concerns about levels of contaminants above SSLs, but accepting the soil would not be a violation of rule as drafted. The receiving site could be putting themselves at risk of future liability and human and environmental impact depending on concentrations.
- This incentivizes generators/receiving sites to always make the call that there has been no release or do very little due diligence.
- Marni reiterated that one goal of the rule is to be sure the language does not result in required testing of all soils moved around the state. The vast majority of soils being handled in the state are not likely to be impacted from releases. The tie to a release and concept of due diligence were added to help clarify this, but creating language that eliminates the dilemma in the first bullet has been difficult.

*Due diligence definition:*

- The list of items that can be used to accomplish due diligence can still be interpreted as having to complete all items on the list. This needs to be corrected.
- “Analytical testing” should be “existing analytical testing” since due diligence is done up front.
- Consider language to strengthen a person’s responsibility for due diligence – good faith effort, etc.

*Manufactured topsoil definition: Add a sentence to clearly state that topsoil containing impacted soil or other solid waste is not manufactured topsoil and is not excluded from the rule.*

- This change would be okay.

*Release definition: As suggested at last meeting, added a sentence to state that clean soil/sediment or soil/sediment managed in accordance with rule is not a release.*

- The definition still reads that addition of anything to a soil would be a release because the definition of contaminant is too broad. This means all soil would need testing for things as insignificant as a worker's urination at a site, concrete dust remnants on the soil from mixing bags of concrete, minor drips from equipment, etc. In the definition of release, contaminant, de minimus or elsewhere, this needs to be addressed.
- Marni added a reference to contaminant, as defined, based on the group's last meeting to try to address this because a contaminant is tied to increases over background. Some pointed out that the definition of contaminant is worded using an "or" instead of an "and", which results in anything that does not occur naturally in the environment being a contaminant. Marni may not be able to revise this definition as it is used several places in the rule outside of the soil/sediment section, but will look into this too.

*Sediment definition: Worked with Alex and Jen on revisions to this definition.*

*Sampling: Previous drafts specified sediment sampling in accordance with WAC 173-204, which resulted in no option to sample in accordance with this rule. Language was changed to allow both options for sediment. Because of this change, another column was added to Table 235-A for sediment parameters.*

- The list of parameters came from older versions of sediment management standards, which may be outdated. Sediment representatives on the workgroup will need to go through the list of parameters to see if they are appropriate.
- Some are unhappy with the references used in describing representative sampling and would like to see industry expertise in deciding what is representative be acknowledged.

*10' separation from groundwater for limited use soil fill sites*

- This separation has not changed despite feedback that this would eliminate many reclamation sites from being able to receive limited use soils. The 10' separation was based on Ecology cleanup program staff recommendations to account for groundwater levels fluctuations over time. Marni plans to discuss this specifically with cleanup program staff once a draft is completed, as well as the placement of 15' of clean soil to close a limited use fill site.

*Table 235-A:*

*Removed naphthalenes.*

*For PCBs, clarified when testing would be triggered.*

*Appendix I, SSLs:*

*Background limits for metals:*

*Marni has gone through an updated resource for establishment of background numbers for metals. US Geologic Survey sampled soils nationwide from 2007-2010 to determine natural background concentrations of metals (and other parameters) in soil. They sampled every 1600 square kilometers, which resulted in 330 samples from 110 locations across WA. Samples were taken over 200 meters from highways, over 50 meters from rural roads, over 100 meters from structures, and over 5 kilometers from downwind industry (smelters, power plants). They took three samples from each location, one at the surface, one just below the surface, and one ~1-2 feet deep. The colorful maps in the USGS report show how widely concentrations of many metals vary. For this reason, Marni has obtained the WA-specific results from USGS (for the highest concentrations found in WA) and would like to establish county-by-county background numbers for metals, since several SSLs are set at background limits. Because the samples 1-3' deep would show the fewest results from human activities, and these are likely the majority of soils moved around the state in projects, results from those test seem most appropriate.*

- There was no support for this approach. Desire a simple list to reference.

- Many receiving sites take soils from across county boundaries and think having separate limits county-by-county could be problematic.
- Why is background a concern, or even double the background? Background levels are only used as the SSL where a lower concentration would otherwise be the protective standard. In other words, background limits are not protective, but the SSL is raised to the background limit because soils do not exist at the protective level in some locations.
- In creating one statewide background limit, Marni will use 90<sup>th</sup> percentile values, but is concerned that this will put many locations automatically over the background level. Soils in those location would be above the clean SSL where that SSL is set at background. Marni will try to draft language in the rule to address this.

*Marni plans to add a note to each parameter to identify the basis for it - MTCA, Ecological impacts, EPA, groundwater protection, background. There are enough questions about the source of SSLs that adding this would provide transparency and be educational.*

*Removed parameters – phosphorous, nitrate, a few others that did not appear to be important based on the lack of standards for them. Removed 22 altogether.*

- Some would like to see phosphorous and nitrate added back in. Marni stated that part of the reason these were removed were because the SSLs are so high as to be almost meaningless, but she can add them back in.
- Some would like to see pH taken away, but acknowledge pH is a concern to others on the workgroup.

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## **Close**

- Marni will send out next draft in the next 2-3 weeks, including SSLs with consideration of new background data.